Deutsches Aktieninstitut
Kapital. Markt. Kompetenz.

Making OMNIBUS a Success

Detailed policy recommendations to regain Europe's competitiveness

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1 Introductory remarks

A summary of the following policy recommendations can be found in our short position paper “Boosting Europe’s Competitiveness by Cutting Red Tape” which has been launched together with this paper.

2 Corporate Sustainability Reporting Directive

The framework created by the Corporate Sustainability Reporting Directive (CSRD) / European Sustainability Reporting Standards (ESRS) should be made more progressive in its implementation. The EU Commission should think about the CSRD/ESRS in the first place as a strategic steering tool for the management to drive their transition policy. For this purpose, the amount of information required must be reduced.

2.1 European Single Electronic Format should be removed

Since 2020, annual financial reports of listed companies have to be prepared in the European Single Electronic Format (ESEF). In practice, this means that the reports must be filed in XHTML-format and financial information must be marked electronically in iXBRL (known as ‘tagging’). This obligation, laid down in Delegated Regulation (EU) 2019/815, will be extended to non-financial reporting by the CSRD.

Experience shows that the iXBRL tagging exercise:

- is complex, time-consuming and significantly burdensome.
- draws significantly on corporates’ and auditors’ resources during the critical time of preparing and auditing the yearly accounts.
- creates additional legal and other risks for issuers.

Tagging adds an extra layer to reporting as human readable information is translated into a machine-readable language with iXBRL.

The potential added value of iXBRL reporting for investors is relatively small, if any. This was already clear when the obligation was introduced in the EU and is even more true today. The XBRL-reporting format was developed in the 1990s, a time when sophisticated AI-tools capable of comparing and evaluating reported information without using XBRL did not exist. Dropping the iXBRL tagging obligation

for both financial and non-financial reporting would be a significant step forward in reducing regulatory reporting burden without negatively impacting investors. At the very least, a detailed impact analysis should be conducted in order to examine whether and to what extent iXBRL tagging should continue in an era of rapidly developing AI.

2.2 Re-defining the scope of the CSRD

We suggest to re-define the scope of application of the CSRD by exempting small and medium-sized capital-market oriented companies from reporting according to the CSRD. Additionally, we propose to increase the thresholds for the categories of undertakings and groups to 450 € million net turnover and 1,000 employees.

2.3 Voluntary reasonable assurance

Sustainability reporting will be subject to mandatory limited assurance. The CSRD stipulates that the Commission shall adopt delegated acts for reasonable assurance standards no later than 1 October 2028, following an assessment to determine if reasonable assurance is feasible for auditors and for undertakings. We urge the Commission to refrain from stipulating mandatory reasonable assurance and keeping the assurance at limited assurance level.

2.4 Postponing the enforcement of sustainability information

Additionally, we propose to postpone the enforcement of sustainability information by national competent authorities (NCAs) by two years until companies, auditors and NCAs gained sufficient experience with the implementation of the CSRD.

2.5 Limiting civil liability

We propose to abstain from disclosure requirements on objectives regarding material sustainability information. The focus should be set on explanations of strategies similar to the obligation to disclose the most important non-financial KPIs in the management report. In the context of sustainability reporting, civil and capital markets law-based liability should be limited as the ESRS can lead to significantly increased liability risks for companies.

2.6 Exempt all subsidiaries

The subsidiary exemption as set out in the CSRD should be modified. Subsidiaries of large public interest entities are currently not covered by the exemption. They must disclose their own sustainability statement. Therefore, the subsidiary exemption should be extended to all subsidiaries of larger groups, regardless of size, legal form, or market orientation.

2.7 Accept English version of consolidated report

At present, EU member states have the option of deciding in which language a consolidated report, which includes an exempted subsidiary, has to be prepared (Art. 19a (9) & 29a (8) Accounting Directive as amended by the CSRD). EU member states should be obliged to accept an English version. Otherwise, companies (depending on the exercise of the language option) must publish the sustainability statement not only in German and English but also in other languages by means of a certified translation. Individual national regulations on the availability of local language versions should be avoided.

2.8 Focus on material topics

Despite the standards, the materiality analysis methodology leaves quite some room for interpretation. CSRD/ESRS should make clear that the focus is on a very limited number of material topics. Disclosure requirement should be limited to the most important ones, i.e. financially material topics and KPIs – with climate at the centre.

3 European Sustainability Reporting Standards

Companies are confronted with tremendous challenges implementing the ESRS:

- extremely high complexity of methods and reporting requirements,
- considerable restrictions on the quality of information, the reliability and comparability of the information disclosed and thus considerable doubt as to whether the (unclearly formulated) reporting objective can be achieved,
- fundamental legal uncertainties including currently unforeseeable risks of liability and legal action under civil law.

Therefore, practice-oriented ESRS next to the reduction of the ESRS data points are necessary.

3.1 Reduce the number of data points

Many required data points are overly detailed and of unclear usefulness. The total amount of approximately 1.100 data points contained in the ESRSs needs to be reduced. We suggest replacing ESRS Set 1 either by the LSME standard, which includes around 500 data points, or a similar set of reduced data points not larger than the current LSME standard. The LSME standard or a similar set of reduced data points would apply equally to large listed and non-listed companies. If this were the case, the LSME standard should also cover opportunities in addition to risks and impacts.

In general, the focus of the ESRS should be set more on impacts, risks and opportunities (IROs). Reporting on IROs, for example including their identification, policies, metrics and targets to manage them, is a valuable concept that can incentivize companies to improve their ESG performance. However, the ESRS require a lot of additional disclosures/KPIs in case a certain topic is considered material. These disclosures often require considerable effort and coordination within the company without a clear benefit. We suggest reducing such additional KPIs/disclosures and instead focusing on the concept of IROs.

It would be beneficial if the ESRS were more principles-based and less prescriptive. More discretion regarding the definition of metrics is needed, i.e. not spelling out metrics in detail. Leave it to the respective company to define the metrics because they know best about the metrics used to steer the IROs.

Data points on which reliable information cannot be collected or reported properly should be removed. For example, the Commission should limit the request for data on the value chain only for requirements relevant to decision-making and to Tier 1.

In addition, data points, which are not useful or valuable for investors should likewise be removed. The focus should clearly be on Key Performance Indicators (KPI) and information relevant to investors and the management. The guiding question for scrutinizing data points should be: Who benefits from the information, and does it help to take the transition forward?

3.2 Ensure that strategically sensitive information is kept confidential

Reporting according to the CSRD might oblige companies to disclose strategically sensitive information. This leads to a clear competitive disadvantage for European

companies. Therefore, companies should be exempted from disclosing this kind of information.

3.3 Ensure full interoperability with ISSB standards

Interoperability between the ESRSs and ISSB-standards is crucial for several reasons. Both EFRAG and the ISSB should aim at global consistency. Companies operating internationally need to comply with multiple reporting frameworks. Consequently, interoperable standards reduce regulatory complexity, form the basis for global harmonization and create transparency and comparability on the business activities of companies, which makes it easier for investors to assess and compare the sustainability performance of companies globally. Moreover, interoperability promotes legal certainty and helps to avoid double reporting.

Cooperation between EFRAG and ISSB should involve alignment of future standard development. The EU Commission should mandate EFRAG to work closely with ISSB on a detailed datapoint comparison because the current interoperability guidance lacks specifics. This will help global companies declare compliance with ISSB standards without conducting individual granular comparisons, therefore reducing unnecessary burden and avoiding double reporting.

3.4 Drop sector-specific standards

Given the magnitude of the sector-agnostic standards EFRAG has produced as ESRS Set 1, the Commission should instruct EFRAG to not further pursue the development of sector-specific standards.

Sector-specific standards are not necessary as ESRS 2 already requires companies to identify entity specific topics. Oftentimes those topics are comparable throughout the industry (e.g., Security and data protection for companies). Also, when using the Disclosure Requirements from ESRS 2 companies have sufficient guidance to draft comparable disclosures. Also, other frameworks, such as SASB which has been taken up in IFRS S2, provide enough guidance for sector-specific aspects.

However, the development of sector-specific standards should depend on sufficient experience with Set 1-reporting, which will certainly take more than one reporting season.

EFRAG and the European Commission should take on board the SASB standards (SASB standards should be the EU sector-specific ESRS). The SASB Standards are well known, strongly supported by investors and broadly used by European companies to disclose information on sector-specific sustainability aspects.

3.5 Drop separate standards for listed SMEs

Successfully achieving the twin transition requires involving both the public and the private sector. Regarding the latter, capital markets finance will play a crucial role due to the immense volume of funds needed. In its present form, the LSME standard, however, will disincentivize small and medium sized companies from going public as they will shy away from the voluminous reporting obligations this is linked to. The introduction of the LSME standard for small and medium sized companies should therefore be stopped.

3.6 Aligned definitions needed to overcome duplication of Corporate Governance Information

The current ESRS lead to duplication of corporate governance information. For example, disclosure Requirement ESRS 2 GOV-1 leads to some duplications of reported information, such as on the existence of committees, their roles, independence matters or remuneration. The reason for that is to be seen in inconsistent definitions. This needs to be addressed.

At present, there are different definitions of independence. Up to now, EU law has always referred to the Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board. Another definition of independence can be found in Table 2 of the ESRS. This is problematic because the Recommendation contains an exception regarding the independence of workers' representatives. This is the result of a political compromise, which is disregarded by the ESRS. Companies are thus confronted with legal uncertainties as regards the independence or workers' representatives. The definition of the EU Recommendation should be taken up in the ESRS.

3.7 Less prescriptive disclosure requirements and KPIs

The ESRS requires companies to make certain disclosures using pre-defined tables. Companies should be granted the flexibility to depart from the use of pre-defined tables in order to make the presentation of their information more user-friendly.

The calculation as well as the inputs for some KPIs are thoroughly defined in the ESRS. This does not give companies enough flexibility. It leads to misalignment between internal steering and external reporting. For example, if the Gender Pay Gap without pension benefits and social charges is calculated each year at a company to check and eliminate a potential pay gap. ESRS in contrast requires companies to use all benefits. This cannot always be influenced by the company. More flexibility for companies is needed.

3.8 Choose net level as starting point

The requirement in the ESRS to report information at gross level should be reviewed. The net assessment of opportunities and risks and the corresponding disclosure from a net perspective is essential for increasing transparency and comparability for the addressees of the reports. Consistency and connectivity with the opportunities and risks report within the management report can only be ensured when applying a net perspective.

3.9 Ensure consistent scope of reporting for financial and sustainability reporting

In contrast to financial reporting, non-consolidated subsidiaries are generally part of the ESRS reporting entity. A different scope of consolidation between financial and sustainability reporting leads to different reporting objects and potentially inconsistent information. It is also associated with a very high level of analysis and documentation effort for the audit. This is since all financially immaterial subsidiaries must be analyzed. Companies must also argue that they are not material for sustainability reporting.

To allow a business-friendly and unbureaucratic approach regarding the scope of reporting, the problem of inconsistencies needs to be addressed. Financial and sustainability reporting should be made subject to the same scope, i.e. financial control.

Stricter consistency with financial control is necessary. Operational control conflicts with the consistency und comparability principle of CSRD between financial and sustainability reporting. No meaningful definition for operational control is available (e.g. permit is not suitable). Determining the scope is cumbersome and the data collection process also, if it is possible at all.

Alternatively, companies should be enabled to choose between an equity share, operational or financial control approach.

3.10 Concrete examples for improvements

- Information on emissions from investments (Scope 3 category 15): Information on emissions from financial investments should be omitted for non-financial companies due to their different business model. Emissions caused by companies that are co-financed by the reporting company (e.g. loans or minority interests) are included in the reporting, even if there is no further business relationship. Naturally, in such cases

there is limited access to information, especially for financial investments in companies that are not subject to the CSRD (e.g. non-EU companies).

- Simplifations concerning M&As: Transitional provisions for corporate transactions should be provided. In the case of corporate transactions, reporting obligations also apply to an acquired group of companies in the year of acquisition, even if they have not previously collected CSRD data.

- ESRS 1 Appendix E: Undertakings have a very strict structure for the sustainability statements. On one hand, the same policies and actions manage several sub-topics. On the other hand, it does not make sense to separate strictly between each and every sub-topic. By the structure presented in ESRS 1 Appendix E undertakings are forced to report the same information several times. For example, ESRS 2 MDR are referring to the same policies, actions and targets and are repeated under several sub-topic chapters.

- Based on the current materiality definition, there is the situation that sub-topics become material because there is only one material impact, risk and/or opportunity. ESRS 2 IRO-1 and IRO-2 requires an overview of which IROs connected to the sub-topic are assessed as material. But in the end the undertaking is not allowed to exclude datapoints which are not relevant for this solid impact, risk or opportunity. The pathway is like that: One material IRO can lead to the fact that a sustainability matter/sub-topic becomes material. If only a single datapoint (mostly metrics) of a sub-topic is relevant for the one material IRO, all related datapoints have to be reported.

- ESRS E1-1, AR 3: Emissions disclosures require assumptions on estimated future emissions from the use of sold goods over the entire life cycle (Scope 3 category 11), which are associated with considerable estimation uncertainties and depend on various factors outside the company's control, e.g. for the sale of shampoo, assumptions on shower duration, shower temperature and hair length of buyers and for the sale/letting of flats, assumptions about the ventilation behaviour of buyers/tenants.

- ESRS E1-6 AR.45d: The subdivision of contractual instruments into bundled/unbundled instruments causes considerable additional work in data collection. As the same paragraph already requires the calculation of the proportion of contractual instruments, the added value of a further subdivision into bundled/unbundled is not apparent and the effort is not proportionate.

- ESRS E1-6 48b/AR.44: There is a lack of delimitation of the relevant ETS systems in the focus of the indicator, which results in an overly detailed

review of all existing, highly fragmented ETS systems. Small systems at regional or city level and pilot projects, such as those in Chinese cities or Canadian provinces, should be excluded from this indicator. Limiting it to systems at national level would make the indicator more practical and practicable.

- ESRS E1-E9: The information regarding “Disclosure of expected short-, medium- and long-term financial effects on financial performance, financial position and cash flows from risks related to climate change in monetary terms” should be dispensed with. Due to the lack of generally accepted methods (see also ESRS E1-E9, AR 68), companies have to resort to internal methods, which, however, are not regularly available in companies (i.e. e.g. own models, policy scenarios, etc.). It is completely unclear how such effects can be determined in a way that is even approximately reliable and comparable.

- ESRS E1-9: The level of detail of the disclosure requirements is too granular and the data points from 2025 onwards are difficult to capture. A broad quantification of transitory and physical risks will present companies with significant challenges, as approaches and methodologies for quantifying many risks are lacking. Common practice in many areas is therefore a qualitative assessment with individual quantification, such as for acute climate risks or transitory CO2 pricing risks. The required granularity of quantification goes far beyond this and should be reduced.

- ESRS E2, para. 32, para. 34 and AR 30: The requirement to report the quantities of SoCs and SVHCs that leave the company's facilities in the form of emissions goes far beyond all previous reporting obligations for emissions. There are already reporting requirements for emissions of substances. These are laid down, for example, in E-PRTRs, BREFs, BATs and specific installation authorisations. Any further reporting requirements would lead to a disproportionate effort that is not justified. Risk management measures must also be established for SVHC in accordance with REACH. This also applies to other substances classified as hazardous.

- ESRS E2, E2, point 32, point 34, definition of SoC according to iii): Information on SoC according to iii) is not possible at this time, as this part of the SoC definition originates from the ESPR, which was not adopted until April 2024. This describes that SoCs for individual products/product groups from 2024 - 2030 are still to be defined. Therefore, it cannot yet be applied here. Only when product-specific SoCs have been defined and reporting requirements arise along the value chain will chemical companies also be able to report SoCs in accordance with iii).

- ESRS E2, para 32, para 34: Disclosure of SoCs / SVHCs generated or used during production. In line with common practice in financial reporting, only the quantities of SoC / SVHC that enter the company and that the company displaces should be reported. The disclosure of internal material flows is not considered material and disproportionate.

- ESRS E2-4, AR 20: Detailed quantities of microplastics including secondary microplastics from wear and tear (e.g. trainers or car tyres). In particular, it is unclear how the amount of secondary microplastics is to be determined (e.g. only wear and tear through use or decomposition of the total weight).

- ESRS E5, E5-4, 30, para. 30: Disclosure of critical raw materials and rare earth elements: Was inserted without context in one of the last draft standards before finalisation. Indicating whether the materials are utilised is not expedient. Critical raw materials is a geopolitical-strategic definition of the EU. The figures are known, individual reporting per company is disproportionate.

- ESRS S1: In addition to data points, breakdowns are usually also required (country level, employee category, contract types). The number of these additional breakdowns and combinations inflates the reporting and does not contribute to the presentation of useful information. Multinational companies with diverse HR source systems face considerable challenges. Restricting individual breakdowns or making all breakdowns optional would simplify implementation. And give companies the opportunity to emphasise material information in the disclosure.

- ESRS S1-10.70, ESRS S1-11.74 + 75 and ESRS S1-15.93 (a) + (b): To simplify implementation, it would be helpful if the EU were to provide a central database that all companies subject to reporting requirements could access and thus use the same basis for their analyses. In-house research on legal circumstances will not lead to a comparable reporting basis and increases the effort for multinational companies enormously.

- ESRS S1-13.83 (a), AR 77: The disclosure requirement and the application requirement AR 77 do not match and it is not clear which requirement is leading, as the DRs and ARs should basically be equivalent. Or do both have to be specified? This technical error can lead to non-harmonised reporting. Furthermore, in other parts of the ESRS, some ARs introduce additional indicators that were not required in the DRs.

- ESRS S1-14.88 (d): In our opinion, the requirement on recordable work-related injury or ill health cannot be reported in a meaningful and standardised way.

- ESRS S1.16-97 (a): The required calculation of the gender pay gap is impractical for multinational companies. An approach based on currently valid contract data is less complex and more comparable. For other payment amounts, it is questionable whether gender discrimination can be assumed by definition.

- ESRS S1-16.97 (b): Calculating the pay ratio on the basis of median values does not appear to make sense, as medians must be formed across boundaries.

- ESRS S2 (workers in the value chain) should be deleted as the data basis is not relevant for the financial sector and data availability is not given since data protection issues exist.

- ESRS S3-SBM-3 9 (a): The required listing of all affected communities is too granular and does not generate any added value for users. The reporting requirement should be reduced and limited to selected locations where there are significant negative impacts for people and the environment, i.e. for affected communities.

- ESRS G1.33: Disclosure of standard *payment terms*, including the extent to which they have been honoured and the average time taken to settle invoices. However, such standard payment terms do not usually exist. In particular, large corporations, some of which have several hundred globally distributed subsidiaries, each with their own regulatory framework and their own customer and supplier groups, do not have standardised terms of payment. Such data is not usually collected centrally. The same applies to the actual payment data, which can vary greatly depending on the geographical markets. As companies themselves do not use this data for control purposes, it remains unclear what this information should be used for.

- The EU Commission should clarify ambiguously defined ESRS (e.g. ESRS E5-5 DR 37 (d) Total amount and percentage of non-recycled waste; ESRS E3 AR 6,7,15 data points of the LEAP approach, some of which are mandatory although the approach is voluntary; ESRS S1 and S2 dealing with contractors; S1-16 DR 97 (a)+(b) Reporting of unadjusted gender pay gap and annual total remuneration rate). We recommend that no further, sometimes misleading, implementation guidelines be developed beforehand;

- Disclosure requirements should allow reporting according to local definitions and legislation since uniform global reporting is difficult (e.g., Definition of “hazardous waste” as per ESRS Glossary: “Waste which

displays one or more of the hazardous properties listed in Annex III of Directive 2008/98/EC (EU Waste Framework Directive)");

- Numerous references to non-legally binding frameworks and guidelines of international organisations (e.g. GHG Protocol, OECD Guidelines for Multinational Enterprises, etc.): It is questionable whether the reference of the ESRS to such (non-EU legitimised) regulatory frameworks can be legally binding. For example greenhouse gas emissions: Companies must take into account 'the principles, requirements and guidelines' of the 'GHG Protocol Corporate Standard (Version 2004)', the 'GHG Protocol Scope 2 Guidance' (Version 2015) and the 'GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard' (Version 2011); the GHG Protocol is currently being revised. Due to differences in content between the GHG Protocol and ESRS and in view of the explicit reference to the 2004 version, the question arises as to whether and, if so, to what extent and in which version the GHG Protocol can be authoritative.

- The application of materiality principles in the calculation, e.g., analysis of the environmental relevance of sites, should be permitted.

4 Sustainable Finance Disclosure Regulation

As an essential part of the existing sustainability reporting framework, the SFDR should also be made subject to the OMNIBUS-legislation in addition to its counterparts CSRD and Taxonomy. Regulatory shortcomings and mistakes made due to the premature creation of the SFDR ahead of the Taxonomy and the CSRD should be corrected in the forthcoming OMNIBUS proposal.

The design of the SFDR must be product-specific and creating reporting obligations for banks must be avoided since the reporting obligations for companies contained in the CSRD must mark the boundary for reporting. Reporting duties of the SFDR must not undermine this principle by introducing stricter reporting obligations for financial institutions, which indirectly will affect companies by facing requests from financial institutions to deliver the additional information they are obliged to report under the SFDR.

Companies obliged to report according to the recently finalized ESRS have to deal with and report on up to 1100 data points. The ESRS reflect the view of the European legislator on what kind of sustainability information is needed. With reference to the SFDR, this means that the regulation should be adjusted to ensure that all information, which banks and investors are required to report under the

SFDR can be generated from the sustainability information disclosed by companies in accordance with the CSRD/ESRS and the Taxonomy.

Under the current framework financial market participants have to provide entity-level disclosure under the SFDR and the CSRD. Generally, the CSRD is the dedicated regulation for entity-level disclosure. Entity-level disclosure also under SFDR results in a duplication of disclosure requirements. Therefore, to streamline disclosure requirements, we recommend focusing the entity-level disclosure in the CSRD and delete it in the SFDR.

The Do no significant harm (DNSH) principle of the SFDR should be based on the same understanding as the DNSH principle of the Taxonomy Regulation.

The materiality assessment of the sustainability information enshrined in the CSRD should also be applied to the Principles of Adverse Impacts (PAIs) of the SFDR. The PAI Indicators in the SFDR should be based on the ESRS. No further information must be required to derive the PAI.

5 Turning the EU Taxonomy Regulation into an optional instrument

The EU Taxonomy should be reviewed as the regulation does not deliver on the set objectives of Sustainable Finance. Due to its limited coverage of industry sectors and limited view on sustainability, it is not a decision-useful tool for investors to assess the sustainability performance of EU companies. Therefore, the Taxonomy should be made optional and its use left to the discretion of corporate users.

5.1 Simplify and streamline the EU Taxonomy disclosure requirements

The EU Taxonomy disclosure requirements define various contextual information as well as several reporting templates for external disclosures that are complex in preparation as well as difficult to comprehend for readers. We therefore suggest streamlining the contextual disclosure requirements, simplifying the main reporting templates as well as eliminating the supplementary tables introduced with the Environmental Delegated Act. The simplification of the EU Taxonomy disclosure requirements will reduce the efforts in preparing the information, increase the usability and comprehensibility of the EU Taxonomy reporting and help to enhance the acceptance of the framework.

5.2 Remove the OpEx KPI

The OpEx KPI as a non-relevant reference value should be eliminated due to its low relevance for the financial market. OpEx is an artificial KPI that cannot be reconciliated with the financial statement. It is not used for steering a company and investors are not able to interpret the published figures. While companies receive little or no questions from investors, the OpEx indicator requires considerable efforts to collect and disclose the necessary data. As an alternative, the OpEx definition could be limited to research and non-capitalized development costs, which can be reconciled with the financial statement.

5.3 Revise the DNSH criteria

The Do No Significant Harm (DNSH) test requires an activity to substantially contribute to one environmental objective set out in the regulation while not significantly harming another in order to be Taxonomy-aligned. This approach is burdensome and not properly designed, especially regarding the objective of pollution reduction and prevention. The criteria for proving Taxonomy-alignment should be simplified.

Companies should only be obliged to review the screening criteria in countries where the legal requirements do not correspond to the European standards. In countries outside the EU, relevant threshold values (e.g. for water utilization) should be based on comparable local standards, even if these are slightly above/below the Taxonomy values.

Overall, the DNSH criteria should be limited to preventing negative trade-off relationships between the Substantial Contribution and the other environmental objectives and not implicitly demanding additional contributions to the other objectives with their own requirements.

Moreover, the technical screening criteria used in this context often set stricter limits and indicators than existing EU-legislation. Technical screening criteria and DNSH criteria should not go beyond existing regulation and be based on international standards or agreements.

5.4 Remove the disclosure obligation of a CapEx plan

The obligation to publish a CapEx-plan should be removed as it ultimately results in disclosing sensitive and confidential forward-looking information. This can lead to competitive disadvantages for companies, especially for non-EU competitors.

5.5 Taxonomy to focus on essential information

Similar to sustainability reporting in line with the CSRD, companies should be allowed to assess the materiality of the information and disclose only essential information. This would allow companies to focus on the relevant KPIs and not waste resources on minimal revenues and CapEx. Companies should not be committed to reporting efforts without corresponding benefits for the users of sustainability information.

5.6 Replace life-cycle assessments

Life-cycle assessments (LCAs) to demonstrate thresholds in significant contribution criteria (gas, hydrogen) should be replaced by harmonised emission factor-based methodologies (e.g. GHG), or qualitative criteria, categorisations or emission factors. LCAs are a costly and lengthy process of several months, requiring an intensive use of internal or external resources, databases and a third-party verification on top.

6 Transition plans

Transition Plans may be a suitable tool to make up for the present shortcomings of the Taxonomy mentioned above. The problem, however, is, that the EU uses different concepts of transition plans in different regulatory frameworks (e.g. CSRD, CS3D, EU-ETS). For industry sectors, many different transition plan guidelines or templates exist. A coordinated approach is needed to reduce reporting efforts undertaken by preparers and to increase legal certainty. In the long term, a coordinated international framework governing transition plans would be desirable.

At a time of climate emergency, companies are mobilized to build a sustainable future and invest in the green transition. They are ready to make their best efforts to reach the objectives of the Paris Agreement. This implies the elaboration of transition plans at the group level to implement climate strategies in a coordinated way, mentioning the level of certainty/uncertainty facing the companies. However, at least four different EU pieces of legislation (adopted or currently being negotiated) at present impose uncoordinated definitions and obligations on transition plans, creating overlapping, inconsistencies, and administrative burden that companies will have to address in the implementation phase. For example:

- the EU Emission Trading Directive refers to “climate neutrality plans” at the installation level,
- the Company Sustainability Reporting Directive refers to “climate transition plans” at the group level,
- the CSDDD refers to “climate transition plans” at the entity level, and
- the Industrial Emissions Directive (IED) promotes “transformation plans” at the installation level.

It is of utmost importance to reach a common understanding of how companies should set up their trajectories and compare them with “1.5°C” trajectories. In particular, the Commission should not depart from the clear wording of ESRS E1, as laid down in AR 2 and AR 26, according to which companies need to benchmark and demonstrate their best efforts to get as close as possible to the 1.5°C trajectory while there is no obligation for them to reach this trajectory individually.

Regarding the 1.5° C target, corporates and banks should get enough flexibility if the target is not met. Banks should not be forced to sell off portfolios if corporates cannot achieve targets because of regulation. Therefore, it would be better to refer to “reasonable efforts” instead of “best efforts”.

Furthermore, as laid down in the Annex of Regulation EU 2023/2441 on ETS Climate Neutrality Plans, companies should provide a “description of enabling conditions and infrastructure needs for the measures and investments”, as the possibility for these investments to take place does not only depend on companies but most often on external factors (energy mix…). This provision should therefore be extended to other types of measures related to transition plans (guidance and ESRS).

Funding for transition plans should be focused primarily on additional resources required - basic investments should not be included in the transition plan.

7 Supply chain regulation (CSDDD and EUDR)

To avoid fragmentation, a European framework on supply chain regulation is preferrable to national rules from the corporate perspective. However, the current text of the Corporate Sustainability Due Diligence Directive (CSDDD) contains various legal uncertainties and is not operable for corporate practitioners. The following steps should be taken:

- Immediately launch a comprehensive competitiveness assessment of CS3D in consultation with businesses and their business associations, to identify and address priority areas where simplification, clarification and burden reduction should be achieved. The CS3D will have to be renegotiated once this assessment has been completed. In the meantime, the application of CS3D must be postponed.

- The scope of the CS3D should focus on direct suppliers/customers, and indirect suppliers should only be included if the company receives substantiated knowledge of a breach of due diligence obligations. This ensures that the companies can enter into a productive dialogue between the company and its business partners to address the adverse impacts and create improvements.

- We recommend deleting the Civil Liability Clause (Art 29) to avoid increased litigation risk for EU companies, which could harm competitiveness. Penalties should suffice to ensure compliance with due diligence obligations.

- Limiting stakeholder engagement: Article 13(3) requires stakeholder engagement in the identification, assessment, and prioritisation of adverse impacts, as well as in the development of measures for prevention, correction, remediation and in the development of indicators for monitoring. Excessive stakeholder engagement can slow down corporate action, and in some cases lead to inaction. We recommend reducing the scope of stakeholder engagement to the most relevant stakeholders, i.e. the people affected by incidents.

- Transition plans should be updated every 36 months instead of 12 months (Art. 22). Corporates and banks are in the early stages of implementing these plans, and the complex nature of the work requires sufficient time for updates.

- Harmonisation and interoperability of rules are key pillars to support Europe’s competitiveness and ensure a well-functioning Single Market. Guidelines and implementing legislation should be adopted at least two years before compliance with legislation becomes mandatory or the transition period should be extended. Otherwise the entry into force should be postponed accordingly.

- The EUDR should also be made subject to the OMNIBUS-legislation. Reporting requirements should only arise from the CSRD as companies report comprehensively according to it. The necessary sustainability information is available to meet the information needs of investors and financial institutions.

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